COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 94 of 2003

U.P.S.R.T.C. … **Appellants.**

Versus

Smt. Kamla Devi
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 31-01-2003 passed in M.A.C. Petition. Case No. 35 of 2001, Smt. Kamla Devi and others Vs. U.P.S.R.T.C., by Motor Accident Claims Tribunal/District Judge, Pithoragarh ***(in short the Tribunal)*** , whereby the learned Tribunal has allowed the claim petition and has awarded Rs.3,14,200/-/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimants –respondents under Section 166 of the Act. Aggrieved, the owner-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal on the ground that the accident in question was not the result of rash and negligent on the part of driver of the appellant, but the motor accident was the result of fog, Pala and bad weather, thereby road was slippery and the Tribunal has failed to appreciate the evidence on the point of income of the deceased and the compensation awarded is excessive.

Brief facts giving rise to the present appeal are that Bharat Singh, husband of claimant no.1, was coming to Pithoragarh by Dharchula bound Delhi bus No. UP 02 B-9049 owned by the O.P.-appellant on 8.1.2001. When the said bus reach near place Tiffin Top, due to rash and negligent driving of the driver, it met with an accident and fell down in a Khadd, resulting into injuries to Bharat Singh ***(the deceased)*** and many others. Injured Bharat Singh died as a result of injuries sustained by him during the course of his treatment. The deceased is said to be a shop keeper and earning Rs. 3000/- per month and was aged 32 years. Hence the claim petition. The O.P.-appellant contested the claim petition by filing written statement on the ground that the accident was not the result of rash and negligent driving on the part of the driver, but it has occurred due to bad weather and ***Pala*** existing on the road, thereby the vehicle in question slipped and fell in a ***Khadd.*** The appellant has admitted ownership of the ill-facted bus.

Learned Tribunal framed necessary issues in the case. On Issue No.1 relating to rash and negligent driving by the driver, it has been held that the accident in question involving the bus no. U.P. 02 B-9049 was the result of rash and negligent driving by its driver, thereby it fell in the Khadd and the deceased sustained grievous injuries, who died in consequence thereof. On Issue No. 2, the Tribunal found that the income of the deceased can be determined at Rs. 2400/- per month, i.e. Rs. 28,800/- per annum. The Tribunal has deducted 1/3rd of it, towards personal expenses of the deceased and has determined annual loss of dependency at Rs. 19,200/-. It has been found that the deceased was aged about 32 years and comes in the age group of 30-35 years. Accordingly to determine just amount of compensation in the present case, multiplier of 16 was applied and total loss of dependency was worked out as Rs. 3,07,200/-. The tribunal has further awarded amount of Rs. 2000/- and Rs. 5,000/- towards funeral expenses and loss of consortium respectively. Ultimately, the claim petition has been decree for compensation of Rs. 3,14,200/- along with 9%

interest, as mentioned in the impugned order against the O.P.-appellant.

We have heard learned counsel for the appellant, Mr. A.N.Sharma, as well as learned counsel for the claimant-respondents Sri G.B. Pande and have carefully gone through the entire material on record including the impugned judgment and award.

The main argument advanced on behalf of the appellant in this case is that from the record, it is made out that the accident in question was the result of bad weather and Pala spread over at the place of accident and has made a reference to the statement of D.W.2, Prem Lal, who was conductor on the ill-fated bus at the relevant time. We have perused the statement D.W.1 Govind Singh, the driver, and D.W.2, Prem Lal, produced by the appellant before the Tribunal. It has come in the evidence of the driver, D.W.1, that the road was in proper condition at the place of accident and the vehicle was in perfect order. He has also stated that at the time of accident, vehicles were running on the road. In the circumstances, when the vehicles were going on the road and the vehicle in question was in order, then it can be safely presumed that had the driver been cautious and careful in driving the bus, the accident could have been avoided. It is but natural that when a vehicle is driven in high speed, it cannot be stopped immediately to avoid an unfortunate eventuality by applying the brakes. Certainly, in this case, the bus was in high speed, though the driver was plying it in a hilly terrain, which gave rise to the accident. The statement of D.W.2, conductor, is not very material when the driver himself has been examined. He has however tried to support the statement of D.W.1, but there is nothing in his statement to exclusively conclude that the driver was not negligent in driving the bus. Moreover, there is positive evidence of an independent witness, P.W.2, Ram datt, who was travelling by the ill-fated bus on the date of accident and had sustained injuries as a result thereof. This

witness has ultimately filed claim petition and has been granted compensation, as stated by P.W. 2 himself. The statement of this witness, examined on behalf of the claimants, is more reliable. This witness has not been shown to be interested to favour the claimants or inimical to depose against the driver of the bus. Therefore, in totality of the evidence, the finding recorded by the Tribunal does not call for any interference. The argument of the learned counsel for appellant is not convincing at all.

The learned counsel next submitted that the income of the deceased and amount of compensation has not been determined properly by the Tribunal, but on this submission, the learned counsel could not point out before us as to how the Tribunal has gone against the material on record in arriving at the amount of compensation. We have narrated above that the income of the deceased was taken to be Rs.2400/- per month, say Rs. 28,800/- annually. The evidence of P.W.1 Kamla Devi fully supports the version that the deceased was running a shop of usual items in a place surrounded by 4-5 villages. This fact has not been controverted by the appellant. The income of deceased was assessed at Rs. 2,400/- per month, i.e. Rs. 28,800/- per annum. We are of the opinion that the Tribunal has committed no error in determining the amount of compensation, as has already been narrated earlier. The annual loss of dependency has been held to be Rs. 19,200/- after deducting 1/3rd towards personal expenses from the said income and multiplier of **16** has been properly applied. In the present case, we are of the view that total amount of compensation i.e. Rs. 3,14,200/- along with interest @ 9% per annum is a just compensation for the death of the deceased. The contention of the appellant on this point has no force. We have no option, but to uphold the judgment and award under appeal.

No other point was urged or argued before us.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount is deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP